HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32(2)(b)

Description of the case.

W.P. No. 1929 of 2005 (S/S)

Km Beena Sharma,
Vs
State of Uttaranchal & others.

Approved for reporting

_____

~~Not approved for reporting~~

Dated of decision 22.12.2005

Initial of Judge

In the High Court of Uttaranchal, at Nainital

Writ Petition No. 1929(S/S) of 2005

Km. Beena Sharma, D/o Late Ram Sanehi Lal Sharma R/o C-422 New Colony Kalagarh, District Pauri Garhwal … Petitioner.

Versus

1- State of Uttaranchal through Secretary Irrigation, Uttaranchal, Secretariat, Dehradun.
2-Chief Engineer and Head of the Department, Karmik Anubhag, Irrigation Department Dehradun. Uttaranchal.
3-Executive Engineer Sinchai Karyashala Khand Kalagarh, Pauri Garhwal
4-Superintending Engineer, Sinchai Nirman Mandal, Yamuna Bhawan Dehradun ..Respondents.

Sri C.K. Sharma, learned counsel for the petitioner.
Sri Harendera Belwal, learned S.C. for the respondents.

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for issue of a writ of mandamus directing the respondent No-3 to give the appointment to the petitioner under the Dying in Harness Rules in the permanent establishment as per her qualification. It was further prayed that the respondents be directed to create a post of the appointment of the petitioner.

Briefly stated the facts giving rise to the present writ petitioner are that the father of the petitioner was appointed on 1-8-1977 as a work supervisor in the work charge establishment of the respondent department and he worked for more than a 22 years. He expired on 16-6-1999 as a work charge employee. After the death of her father the petitioner on 3-3-2003 applied to the respondent No. 3 for the appointment on the place of her father under the Dying in Harness Rules. The application of the petitioner was allowed by the respondent No. 3 but instead of giving the appointment on the basis of the qualification the petitioner was allowed to join as muster roll employee on the

daily wage basis as a Beldar. The petitioner in pursuance of the order dated 15-3-2003 joined the services in the office of the respondent No. 3. the petitioner also alleged that she has the qualification of Graduation and she has obtained second class marks right from High School to her Graduation and as per qualification she is entitled to be appointed as a clerk in the pay scale of Rs. 2165/- per month as sanctioned vide order dated 31-5-2005. It was also contended that as per G.O. No. 14/90-27-Se 0-7-85(5)/87 dated 17-10-1990 there is provision that the employees who have continuously worked for more that ten years they shall be appointed on the basis of their qualification.

From perusal of the record it reveals that the Executive Engineer vide his letter dated 6-10-2004 (Annexure-11 to the writ petition) recommended that application of the petitioner to the Superintending Engineer for her promotion on the post of Clerk (2) at the minimum wages of Rs. 1882/- per month according to her qualification. The Superintending Engineer vide his order dated 23-3-2005 (Annexure No. 13 to the writ petition) recommended that the petitioner may be appointed on the post of daily wager clerk (2) at the minimum wage of Rs. 1882/- per month. From perusal of the record it also reveals that the respondent No.3 vide his order dated 26-12-2003 (Annexure-14) and order dated 4-12-2003 (Annexure-16) the daily wager supervisors Prawesh Kumar and Jitendra Kumar respectively were granted appointment according to their qualification.

Rule 5 of the U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, provides as under:-

5.”[Recruitment of a member of the family of the deceased] [Subs. By Noti. 6/XII/73-Ka-2-99 dated 20th January 1999, published in U.P. Gazette (Extra) Part-4 Section (Ka) dated 20th January 1999].

(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central

government or a State Government or a Corporation owned or controlled by the Central Government or a State Government one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-

a. fulfils the educational qualification prescribed for the post,

b. is otherwise qualified for Government service, and

c. makes the application for employment within five years from the date of death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government Servant was employed prior to his death.

(3) [Ins. By Noti. 6/12-73-Ka-2-2001, dated 12th October, 2001 [Vide U.P. Recruitment of Dependants of Government Servants Dying in Harness (Sixth Amendment) Rules, 2001 (w.e.f. 12.10.2001] Each appointment under Sub-rule (1) should be under the condition that the person appointed under sub-rule (1) shall upkeep those other family members of the deceased Government Servant who are incapable for their own maintenance and where dependent of the above-said deceased Government servant immediately before his death.

The Apex Court in the mater of Smt. Sushma Gosain and others versus Union of India and others; (1989) 4 Supreme Court Cases 468 has held as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is too mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

In the case of Dhalla Ram vs. Union of India AIR 1999 SC 564, the Hon'ble Supreme Court has held as under:-

"The very object of making appointment on compassionate grounds is to rehabilitate the family in distress of the deceased employee who dies in harness. There should be no difficulty to consider an eligible candidate for providing immediate sustenance to the members of the deceased employee. He had applied on July 15, 1987 and the application was rejected on July 14, 1988. He filed the O.A. on July 12, 1993. In view of the long delay, after the refusal by the Government, in filing the application, the same cannot be entertained. The appointment on compassionate grounds is not a method of recruitment but is a facility to provide for immediate rehabilitation to the family in distress for relieving the dependent family members of the deceased employee from destitution."

Further it may be pointed out that to live in a dignified manner is a fundamental right as contained under Article-21 of the Constitution of India and no one can be deprived of getting the necessities of life, as has been held by the Apex Court in the case of Kapila Hingorani. Vs, State of Bihar; (2003) 6 SCC

Supreme Court Cases. The relevant paragraphs are quoted below:-

> "52.Yet again in Shantishar Builders v. Narayan Khimalal Totame this court observed: (SCC p. 527, para 9)
>
> 9. Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.
>
> 53. This Court upheld the right to shelter in P.G. Gupta vs. State of Gujarat Chameli Singh and Ahmedabad Municipal Corpn. Vs. Nawab Khan Gulab Khan.
>
> 54. In Chameli Singh case this court held: (SCC p. 555, para 8)
>
> "8. In any organized society, right to live as a human being is not ensured by meeting only the animal need of man. If is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhabit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies that right to food, water, decent environment, education, medical care and shelter. These are basic human right known to any civilized society."
>
> It proceeded to hold: (SCC pp.555-56, para 8)
>
> "Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the directive principles, the State should be deemed to be under an obligation to security it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organized civil community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the

fundamental duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being."

55. The term "life" used in Article 21 of the Constitution of India has a wide and far-reaching concept. It includes livelihood and so many other facets thereof. "Life" as observed by Field, J. in Munn v. Illinois means something more than mere animal existence and the inhibition against the deprivation of the life extends to all those limit and faculties by which life is enjoyed (See Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadharni and Olga Tellis vs. Bombay Municipal Corpn)"

From the facts of the case before me it is clear that the petitioner was provided employment on the death of her father as muster roll employee on the daily wage basis as a Beldar. G.O. No. 14 dated 17-10-1990(Annexure No. 7 to the writ petition) referred above, there is provision that the dependants of the work charge employees who have continuously worked for more than ten years they shall be appointed on the basis of their qualification. The father of the deceased has served the respondent department for about 22 years. The petitioner is B.A. and in these circumstances the petitioner should have been considered for her appointment on the post as per her qualification. In the matter of Smt. Sushma Gosain (para) the Hon'ble Supreme Court has laid down the principle that if there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

Consequently the writ petition is allowed. A writ of mandamus is issued directing the respondents to consider the appointment of the petitioner in accordance with her qualification on compassionate ground within six weeks from the date of filing of certified copy of the order.

(Rajesh Tandon, J.)

22-12-2005

ISB